

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DOMICO PATRICK MILLER,

Defendant-Appellant.

UNPUBLISHED

August 18, 2011

No. 297071

Macomb Circuit Court

LC No. 2009-004792-FC

Before: CAVANAGH, P.J., and WILDER and OWENS, JJ.

PER CURIAM.

Defendant appeals as of right his jury convictions of larceny from the person, MCL 750.357, and assault and battery, MCL 750.81. We affirm.

Defendant argues that there was insufficient evidence to convict him of larceny from the person. We disagree. This Court reviews a claim of insufficient evidence de novo. *People v Ericksen*, 288 Mich App 192, 195; 793 NW2d 120 (2010). The Court must view the evidence presented in the light most favorable to the prosecution and determine whether a rational trier of fact could have found, including through reasonable inferences from the evidence, that the essential elements of the crime were proven beyond a reasonable doubt. *People v Hutner*, 209 Mich App 280, 282; 530 NW2d 174 (1995).

To sustain a conviction for larceny from the person, the prosecutor must prove: “(1) the taking of someone else’s property without consent, (2) movement of the property, (3) with the intent to steal or permanently deprive the owner of the property, and (4) the property was taken from the person or from the person’s immediate area of control or immediate presence.” *People v Perkins*, 262 Mich App 267, 271-272; 686 NW2d 237 (2004).

In this case, when viewed in the light most favorable to the prosecution, the evidence was sufficient to satisfy the elements of larceny from the person. Diane Sommer testified that defendant took her cell phone and money from her possession. Defendant testified that he took Sommer’s cell phone and ran away with it after seeing a car drive by. Police officers found defendant in possession of a \$50 bill and a Metro PCS cell phone, identified by Sommer as belonging to her. When approached by the officers, defendant stated, “I [f----] up this time. I’m going to prison for sure.”

While defendant's testimony regarding the \$50 bill belonging to him is contrary to Sommer's testimony that defendant took her cell phone and money from her possession, the weight accorded to this evidence is a question for the jury, and any conflict in the evidence must be resolved in the light most favorable to the prosecution. See *People v McRunels*, 237 Mich App 168, 181; 603 NW2d 95 (1999). Circumstantial evidence and reasonable inferences arising therefrom may be sufficient to establish an element. *People v Bulmer*, 256 Mich App 33, 37; 662 NW2d 117 (2003). It is reasonable to infer from defendant's statement, when the officers approached him, that he intended to deprive Sommer of her belongings and expressed consciousness of his guilt. Defendant argues that Sommer and the officers were not credible. However, an appellate court is required to draw all reasonable inferences and make credibility choices in support of the jury verdict when assessing the adequacy of a prosecutor's evidence to convict. *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000). Thus, based on these facts, the jury could conclude that defendant took Sommer's possessions from her person or immediate area without her consent and with the intent to steal or permanently deprive Sommer of her property.

Affirmed.

/s/ Mark J. Cavanagh

/s/ Kurtis T. Wilder

/s/ Donald S. Owens